IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.638 OF 2005

Ms.Mohini Chandrakant Ogale ..Petitioner.

Vs.

Thane Zilla Parishad & anr. ..Respondent.

...

Mr.N.V.Bandiwadekar for the Petitioner.

Mr.S.P.Thorat for Respondent Nos.1 and 2.

....

CORAM : A.P.SHAH &

DR.D.Y.CHANDRACHUD, JJ.

9th June, 2005.

P.C. :

1. On 3rd June, 1995 the Petitioner was appointed as a primary teacher in a Zilla Parishad school conducted by the First Respondent. She then held the required qualification of being a S.S.C. and D.Ed. During the course of service, the Block Education Officer of the Panchayat Samiti, Palghar permitted the Petitioner to acquire a B.A. Degree. The Petitioner passed her B.A. in 1996 from the Yeshwantrao Chavan Open University in Nashik. In

1998, the Petitioner acquired an M.A. Degree from the S.N.D.T. University, Mumbai. At that time the Petitioner was drawing a pay scale of Rs.1200-2040. On 10th November, 1998 the First Respondent granted to the Petitioner the pay scale of a trained graduate teacher of Rs.1400-2600. On this basis, an order was passed by the Second Respondent. One of the conditions for the grant of the trained graduate teacher's pay scale was that the Petitioner must acquire the B.Ed. qualification within a period of five years, failing which her increments would be stopped. The Petitioner thereupon commenced teaching classes in standards 5 to 7 of the school and was paid her salary in accordance with the higher pay scale. In order to acquire the B.Ed. qualification, the Petitioner proceeded on leave between June 2002 and April 2003 and took admission at the Tilak College, Pune. The Petitioner completed the B.Ed. degree course in May 2003 in first class from the University of Pune. She has, therefore, duly fulfilled the condition subject to which the trained graduate teacher's pay scale was allowed to her. The Petitioner received her salary in the aforesaid scale from November 1998 till December 2004. In

January 2005 she was, however, informed that her annual increment which was due in November 2004 has been withheld. The Petitioner represented to the First Respondent on 5th January, 2005 against the withholding of the increment.

2. The Second Respondent served upon the Petitioner an order dated 31st December, 2004 purporting to cancel the trained graduate teacher's pay scale which was allowed to her on the ground that a complaint had been made by two primary teachers. The order has been passed without giving to the Petitioner an opportunity of being heard. Counsel for the Petitioner urges that the decision of the Respondents to deprive the Petitioner of the trained graduate teacher's pay scale is liable to be quashed and set aside, first on the ground that it has been cancelled after a period of more than six years on the basis of a belated complaint by some other teacher and secondly, on the ground that there has been a patent violation of the principles of natural justice.

3. Having heard the counsel, we are of the view that the Petitioner is entitled to succeed.

The Petitioner was granted a trained graduate teacher's pay scale as far back as in November 1998. This was subject to her acquiring the B.Ed. qualification within a period of five years. The Petitioner has duly complied with the condition. The Petitioner is a qualified assistant teacher and besides the S.S.C and D.Ed. qualifications which she held initially, she has since completed her B.A. in 1996, M.A. in 1998 and B.Ed. in 2003. The belated deprivation of the pay scale six years after it was granted is patently unsustainable. There was no reason for the First Respondent to do so on the basis of a purported complaint of some other teachers. Besides, action of the nature that is involved in the present case has serious civil consequences and could not have been pursued without compliance of the principles of natural justice (see in this connection the judgment of the Supreme Court in Bhagwan Shukla v. Union of India - AIR 1994 SC 2480).

4. In these circumstances, the Petition has to be allowed and is accordingly allowed. The impugned communication of the First Respondent dated 31st December, 2004 is accordingly quashed

and set aside and the Respondents are directed to restore the Petitioner to the trained graduate teacher’s pay scale with consequential benefits with effect from the date on which she was deprived of the said scale by the Respondents. Necessary action shall be taken within a period of four weeks from today. The Petition is accordingly disposed of.